IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.496 OF 2005

M/s.Suku Digital Pvt.Ltd.& Anr. .. Petitioners.

V/s.

Union of India & Others .. Respondents.

Mr.M. Sanklecha i/b. Mulla & Mulla CBC for the petitioners.

Mr.A.J. Rana, senior counsel for the respondents.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 30TH MARCH, 2005.

P.C. :

Heard rival parties. Perused petition. Rule returnable forthwith by consent of the parties.

2. This petition is directed against twin orders dated September 16, 2004 and October 19, 2004 respectively. By the first order, the appellant before Tribunal/Petitioner herein was directed to make predeposit in the sum of Rs.10,00,000/- by October 15, 2004 and to report compliance by October 19, 2004. It appears that the present petitioner could not comply with the said order of predeposit with the result it suffered another adverse order dated October 19, 2004; whereby appeal itself came

to be dismissed for non-compliance of the earlier order dated September 16, 2004.

3. The petitioner submits that the order dated September 16, 2004 directed predeposit in the sum of Rs.10,00,000/- proportionately. The petitioner, therefore, was required to seek clarification as to what the Tribunal meant by using the word "proportionately".

4. The Tribunal did not clarify its order. Instead, proceeded to dismiss the appeal for non compliance of the order dated September 16, 2004, consequently, provision of Section 129A of the Customs Act. That is how this petition challenges both these orders in this petition filed under Article 226 of the Constitution of India.

5. On being noticed, Mr.Rana, senior counsel appeared for the Revenue and submitted that looking to the peculiar facts and circumstances of the case this Court should exercise discretion to pass appropriate order taking into account the interest of justice.

6. Having heard rival parties, looking to the consensus between the parties, we direct the

petitioner to deposit Rs.5,00,000/- in cash by way of predeposit within six weeks from today. Impugned orders dated September 16, 2004 and October 19, 2004 are quashed and set aside subject to predeposit of Rs.5,00,000/-. Failure on the part of the petitioner to deposit such amount, this petition shall be deemed to have been dismissed with costs. In the event of compliance of this order within stipulated period, appeal filed by the petitioner shall stand restored and it shall be open for the Tribunal to deal with and hear the appeal on merits as expeditiously as possible and dispose of the same by a reasoned order on its own merits in accordance with law.

7. The writ petition stands disposed of in above terms. Rule is, accordingly, made absolute with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)